

CT 147
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

THE CITY OF BREMERTON, a
municipal corporation,

Plaintiff,

v.

WILLIAM SESKO and NATACHA
SESKO, and their marital
community,

Defendants.

NO. 97-2-01749-3

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS MATTER having come on regularly for hearing before the undersigned, plaintiff appearing through its counsel, Jane R. Koler of Casey & Pruzan, defendant appearing pro se, the court having heard the evidence and testimony of plaintiff in support of the Complaint herein, and considered the Trial Brief submitted by the City of Bremerton, and being fully advised in the premises,

NOW, THEREFORE, makes the following:

FINDINGS OF FACT

Note: Order to be entered on ^{May 8,} April 24, 1998, at 1:30 p.m.

1. The City of Bremerton issued a Cease and Desist Order to William and Natacha Sesko on February ² 5, 1995, which specified that a land use violation was

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BREMERTON-006691

1 occurring because the Seskos were conducting an illegal junkyard on their property
2 located at 1701 Pennsylvania Avenue, Bremerton, Kitsap County, Washington.

3 2. The Seskos appealed the Cease and Desist Order to the City of Bremerton
4 Planning Commission, which upheld the Cease and Desist Order on April 18, 1995.

5 3. The Seskos next appealed the City of Bremerton Planning Commission
6 Decision to the Bremerton City Council. On June 28, 1995, the Bremerton City Council
7 upheld the Planning Commission Decision, which found that the Seskos were illegally
8 operating a junkyard on their property, and the operation on the Sesko property was not
9 a nonconforming storage yard.
10

11 4. The Seskos appealed the June 28, 1995, Decision of the Bremerton City
12 Council to the Kitsap Superior Court. The Kitsap County court case was dismissed for
13 want of prosecution on December 4, 1996.

14 5. By virtue of prior administrative proceedings, certain findings have already
15 been determined. It has been determined that the Seskos are operating an illegal
16 junkyard on their property. Prior administrative proceedings determined that the Seskos
17 were not operating a nonconforming storage yard on their property. The Seskos' land
18 use appeal contesting such findings has been dismissed by the Kitsap County Superior
19 Court. The Seskos' failure to proceed in the past action does not provide a defense in
20 the present nuisance action.
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1 6. The Seskos' alleged violations of the Bremerton Shoreline Management Act
2 Master Program does not prevent the City of Bremerton from proceeding with the present
3 nuisance action. The fact that the property might be contaminated does not affect the
4 City's ability to maintain the present nuisance action. The contaminated condition of the
5 property may have affected the purchase price.
6

7 7. The court finds that the property is a nuisance per se because the Seskos
8 are illegally operating a junkyard on this property without a business license and without
9 authorization under the City of Bremerton's Land Use Code.
10

11 8. Conditions on this property also constitute an actual nuisance.

12 9. Evidence presented to the court provides abundant evidence that the
13 collection of objects on the Sesko property unreasonably interferes with the ability of
14 neighboring property owners to use and enjoy their land. The Seskos' property is
15 covered with old ~~vehicles~~, dilapidated vehicles, including boats, buses, and cars, tires,
16 rusty tanks, rusty machine parts, junk piers, wooden pallets, concrete chunks, modular
17 buildings, metal debris, storage tanks, old signs, as well as a building on sled runners,
18 old boats, a rusty barge, storage tanks, pontoons, a rusty breakwater float, mattresses,
19 styrofoam floats, portable buildings, a crane, rusty metal objects, metal scraps, and wood
20 scraps.
21

22 At the trial, neighbors who live in the vicinity of the junkyard, provided compelling
23 testimony that the junkyard unreasonably interferes with their ability to enjoy their
24

properties and is resulting in actual and substantial harm because the property is an excellent habitat for rats and constitutes an attractive nuisance for children in the area. The collection of objects on the site lure children from the area to the site, and the junkyard site provides a dangerous setting for children's play.

There is a well-grounded fear of injury to the City of Bremerton as a result of operating a junkyard on this property. Operating a junkyard on in this location endangers nearby property owners and poses a threat of irreparable harm to them. The photographic evidence constitutes overwhelming evidence that the collection of objects on the Sesko property diminishes the enjoyment of nearby property owners of their homes. Photographs show that this junkyard has a significant negative impact on the surrounding properties. The testimony of Dan Calnan, an appraiser, established that the junkyard has caused general devaluation of properties in the area, a circumstance which results in substantial injury to property owners living in the area. For the above reasons, the property constitutes an actual nuisance.

10. The only remedy available to the City of Bremerton which will provide relief to the property owners living in the area is the issuance of a mandatory injunction which requires the Seskos to clean up their property by removal of all junk from their land. The Seskos are given 120 days to accomplish a cleanup of this property.

Neighboring property owners have a right to use and enjoy their properties free from the disturbance created by the junkyard. Balancing the equities shows that

1 issuance of an injunction is necessary to protect nearby property owners. The Seskos
 2 have no entitlement to run a junkyard in this location; the Bremerton Land Use Code
 3 does not allow a junkyard in the BP zone in which the Sesko property is located.
 4

5 In ordering the Seskos to clean up their property, it is necessary to distinguish
 6 between the abatement of the nuisance and the cleanup of toxic contaminants.

7 This order in no way obliges the Seskos to clean up toxic contaminants on the
 8 property. This order requires the Seskos to clean up all the junk (all objects and
 9 structures collected on their property) located on their property. The City needs to
 10 facilitate the cleanup of the property by issuing any necessary permits to authorize
 11 removal of the objects from the property.
 12

13 The Court will maintain jurisdiction over this case until the cleanup is accomplished.
 14 The Seskos cannot use this property as a storage facility and cannot maintain the
 15 collection of objects and structures on the property.

16 The Seskos will not be required to eliminate or secure the concrete pit on their
 17 property. Storage of junk or objects shall not be allowed in the concrete pit.
 18

19 **CONCLUSIONS OF LAW**

20 The City of Bremerton is entitled to a permanent mandatory injunction which
 21
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1 requires the Seskos to clean up their property by removing all objects from their
2 property.

3 Dated this 28 day of May, 1998.

4
5
6 JAY B. ROOF, JUDGE
7

8
9 Presented by:
10 CASEY & PRUZAN

11 Jane Koler
12 Jane Koler, WSBA No. 13541
13 Attorney for Plaintiff

14 Copy received; Notice of
15 presentation waived:

16 William J. Sesko
17 William Sesko, Pro Se
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